

From: Bill Meyer
To: Microsoft ATR
Date: 1/20/02 1:40pm
Subject: Tunney Act Comments: Objections to the Proposed Microsoft Settlement.

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CC: william.delahunt@mail.house.gov@inetgw,GOffice@sta...

To: U.S. Department of Justice (microsoft.atr@usdoj.gov)
From: William M. Meyer
Re. Proposed Final Settle in United States v. Microsoft Corp.

I'm writing to protest the proposed settlement with Microsoft in United States v. Microsoft Corp., under the provisions of the Tunney Act (Antitrust Procedures and Penalties Act, 15 U.S.C. ? 16)

As a professional in computer, with over 20 years of experience in computer networking and Internet development, I believe that the proposed settlement is fundamentally flawed and will fail completely to address the root level problems that the Microsoft Windows monopoly poses to this country.

In short, I don't believe that the proposed settlement provides adequate redress to American businesses and consumers for the real and tangible damages that they have suffered due to Microsoft's illegal abuse of its Windows monopoly, nor will the proposed settlement ensure that Microsoft doesn't continue it's illegal business practices in the future. The finalized outcome of United States v. Microsoft Corp., 87 F. Supp.2d 30 (D.D.C. 2000) will have lasting, substantive and historical consequences on American businesses, individuals and the future effectiveness of antitrust law in the United States.

The proposed final settlement does not demonstratively provide of the claimed benefits to consumers as stated in the Proposed Final Judgement. In addition, it offers little or no relief or restitution to the American Businesses and individuals who comprise the victims of its illegal abusive practices. The Final Proposed Settlement should be rejected and, absent a completely new Settlement Proposal from the Defendant, the Court should continue with the Penalty Phase of United States v. Microsoft Corp. towards the goal of achieving a settlement or judgement that adequately and permanently addresses these issues.

I offer the following arguments to the Court in support of my request to reject the Proposed Final Settlement.

Microsoft's Monopoly gives it undue political and economic influence and threatens compliance.

The de facto monopoly of the Windows operating system and Office business suite

makes the majority of the American businesses and individuals dependent on these products in the course of their daily activities. Thus, everything related to the Microsoft Windows products almost immediately impacts the majority of our institutions. This, in itself, is an enormous problem with potentially devastating consequences for our Country, freedoms, privacy and well being. The pervasiveness of Microsoft's Monopoly and America's current dependance on Microsoft's products prevents the Proposed Final Settlement's ability to deliver on every point of the OVERVIEW OF THE RELIEF section of the

Competitive Impact Statement in that every action in takes will necessarily have

huge significance to American Businesses and individual consumers and the ability of the Government to react effectively after the fact in restraining Microsoft's actions will be practically impossible. This is evidenced already in the significant business actions Microsoft has already taken during the course of United States v. Microsoft Corp. which are not addressed by the Proposed Final Settlement. In short, by the time the proposed regulatory system can react, to an action by Microsoft, the result will be a fait accompli. Technology in general, and Microsoft in particular move to fast to be effectively regulated under the proposed agreement. The Windows XP and Microsoft .Net are two relevant examples of Microsoft technology that has outstripped the proposed relief before it is even in place. The fact that nine

states have rejected the proposed settlement suggests that Microsoft's

political power is influencing the DOJ to accept a settlement that is not in the interests of those states in the opinion of their Attorney's General.

Window XP and Microsoft .Net vastly extend Microsoft's monopoly

The case itself has proven that Microsoft illegally abused it's monopoly in the

past to the detriment of it's customers and the American public. In the time since that ruling, Microsoft has embarked on the most ambitious and aggressive expansion of its business areas in its history. The Windows .Net platform is designed from the bottom up to be a required participant in every business transaction conducted online. Whether they achieve that goal or not will only be known in the fullness of time, but the fact is that they are putting every resource they can towards that end. This point directly addresses the

Proposed

Settlement's OVERVIEW OF THE RELIEF points: 1, 2, 3, 4, 6, 7 & 8. In addition,

it violates the spirit of the Proposed Final Solution which, "...seeks to eliminate Microsoft's illegal practices, to prevent recurrence of the same or similar practices and to restore the competitive threat that middleware products posed prior to Microsoft's unlawful conduct. "

The Microsoft Windows monopoly hurts American productivity

An equally serious problem is the increasing cost to American business and individuals of Microsoft's predatory business practices. The constant stream of required updates, patches, and new releases of Microsoft products is a constant and expensive drain on the American economy. At the same time that most businesses are increasingly dependent on Microsoft products, they are finding that the financial and productivity costs of these products to be increasing dramatically. This trend will only increase as the pervasiveness of the Microsoft Windows platform increases and it represents an unfair abuse on Microsoft's monopoly on American businesses and individual consumers.

Microsoft's the cost of Microsoft Windows products, as they relate to end users

is not addressed at all in the Proposed Final Settlement, but any settlement or

judgement that is to provide effective relief must address these issues.

Microsoft's New Licensing Practices are abusive

The Proposed Final Settlement, Section III A discusses measures to protect OEM's from predatory and anticompetitive practices by Microsoft. It is an irreparable flaw in the Proposed Final Settlement that it doesn't address these

same protections for American business and individual consumers of Microsoft products. A current example of Microsoft's abuse in this area is it's aggressive campaign to proactively police product licensing within it's user base. Through it's own efforts and through proxy groups like the SBA, Microsoft has become an increasingly intrusive and hostile presence in the American business community via their costly, time consuming and abusive "Licensing Audit," and "Amnesty," programs. These practices directly target business and individual consumers of Microsoft products using a "guilty until proven innocent," premise and the thinly veiled threat of legal action to force

compliance via expensive and time consuming software audits. These programs reveal a complete disdain for American businesses and consumers that is unprecedented historically.

Compliance itself is a vague and shifting target due to the constantly changing

nature and terms of Microsoft's software licensing policies. A complete and confident understanding of the licensing agreements accompanying most Microsoft

products is, literally, impossible for anyone without a sound knowledge of contract law. At the same time, laws such as the UCITA are increasing the enforceability of these shrink wrap license agreement. Microsoft has publicly announced that it intends to shift its emphasis from a User License Agreement to a Subscription-based model wherein they will receive regular required payments from users of their products and have the ability to force

upgrades on their user base at will. Speaking as a computer professional and a consultant representing a variety of business and individual clients, I can say that no one I know thinks such an arrangement would benefit them or their business. This issue must be addressed with effective and permanent relief in any final settlement or judgement.

National Security could be compromised by the Microsoft Monopoly. Finally, although it is not addressed explicitly in the Proposed Final Settlement, the real and significant threat to National security must be considered in any settlement or judgement of United States v. Microsoft Corp.

Many computer professionals and security experts believe that we will soon face

a terrorist attack that focuses and is waged against our information systems and national Internet infrastructure. They are basing their beliefs on their daily experience in coping with the virtually continuous computer virus attacks

that are focused on Microsoft products and which exploit programming flaws in these software applications. In point of fact, any objective review of Microsoft's security performance would have to conclude that they are not capable of producing a secure version of their operating system. Their most recent release, Windows XP was vigorously touted by Microsoft as their most secure version yet. This seems almost whimsical in retrospect in that reality of Windows XP since its public release has been the announcement of one security-related bug after another. This has culminated with the recent UniversalPlug&Play bug which allows a hacker to take complete control of a Windows XP system and do anything that the authorized user could do. The security flaws in Microsoft Windows cost American businesses and individuals billions of dollars in lost productivity, untold aggravation and are potentially disastrous in the event of a determined terrorist attack. Anyone familiar with the technical debate on Windows security will confirm the potential for a DDoS attack against Windows XP that could conceivably shut down

the Internet in America. As a monopolist, Microsoft should be subject to legal liabilities for the direct losses incurred through the use of its faulty products. This issue is not addressed in the Proposed Final Settlement, but it

must be considered in any effective and permanent settlement.

Summary, Conclusions and Request to the Court

In summary, I believe that the Proposed Final Settlement does not

"...provide a

prompt, certain and effective remedy for consumers by imposing injunctive relief to halt continuance and prevent recurrence of the violations of the Sherman Act by Microsoft that were upheld by the Court of Appeals and restore competitive conditions to the market." The consequence of the adoption of the Final Proposed Settlement would result in the continued abuse of the Microsoft Windows monopoly and further damage to American business and individual consumer. For a multitude of reasons this cannot be allowed to happen. The United States v. Microsoft Corp. may be the best chance that we will ever get to effectively solve this problem and rectify Microsoft's abuse of its Windows Monopoly.

For the reasons stated in the body of this message, and others, I encourage the

Court to unequivocally reject the current proposed Settlement and begin the penalty phase of the case again with the stated goal of providing adequate redress to American business and individual consumers of Microsoft products and

to ensure that the illegal monopolistic actions Microsoft has been convicted of

will not reoccur ever again.

Thank you for your consideration,

MTC-00014120_0004

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